

Cargill, Inc. and Cargill Turkey Production, LLC (“the Cargill Defendants”) offer this reply to Plaintiffs’ opposition (Dkt. No. 2119) to Defendants’ Joint Motion for Summary Judgment on Counts 4 and 5 for nuisance (Dkt. No. 2033) to counter a particular false assertion regarding the Cargill Defendants.¹ Plaintiffs’ brief incorrectly represents that:

(Dkt. No. 2119 at 15-16, citing, e.g., CARTP000009; citations, quotations, & emphasis omitted.)

For this Cargill allegation, Plaintiffs rely on a single page from the Introduction to a “Contract Grower Environmental Best Management Practice Guide.” *First*, far from supporting Plaintiffs’ over-the-top claim, the cited page pertinently states merely that:

The goal of farm nutrient management planning is to minimize adverse environmental effects, primarily upon water quality, and to avoid unnecessary nutrient applications above the point of optimization so long-run net farm financial returns are optimized.

¹ The Cargill Defendants also adopt and join in the arguments and authorities set forth in the Reply in Support of Defendants' Joint Motion for Summary Judgment on Counts 4 & 5 of the Second Amended Complaint and Integrated Brief in Support (Dkt. No. 2033) filed herein by other Defendants. (See Dkt. No. 22 __).

It should be recognized that some level of nutrient loss to surface and groundwater will occur despite following the recommendations in this manual; however, these losses should be lower than would occur without nutrient management.

(Dkt. No. 2103-4: Sealed Ex. 110 at CARTP000009; see also Ex. A: excerpts of same².) On its face, this text does not support any claim about **poultry litter** or waste, let alone Plaintiffs' statement that "poultry waste always runs-off." Rather, the text generally regards "nutrient applications," which could just as easily refer to commercial fertilizers or cattle manure as to poultry litter. Indeed, the reference to avoiding unnecessary applications so as to optimize financial returns seems to indicate relatively expensive commercial fertilizers. The guide as a whole addresses a wide range of general farm management issues, including use of commercial fertilizers. (E.g., Dkt. No. 2103-4 & Ex. A at CARTP000016: "The soil, manure, sewage sludge, organic matter decomposition, and commercial fertilizers can supply crop nutrients for optimum crop growth to occur.") Thus, the statement from the Introduction does not support Plaintiffs' allegation that Cargill somehow "agrees" that litter application always results in runoff.

Further, the text says nothing about the quantity or circumstance of nutrient loss and does nothing to support Plaintiffs' exaggerated notion that all IRW land applications of litter necessarily result in a nuisance at all times in all locations. To the contrary, the guide encourages growers to follow applicable governmental rules on any nutrient applications:

Local regulations pertaining to nutrient management may be developed for all or certain categories of farm operation. Regulations and ordinances addressing the same issue can vary a great deal among localities. It is best to contact the local government directly with respect to the their nutrient management regulations.

² The version at Dkt. No. 2103-4 carries an outdated "attorneys' eyes only" label. At Plaintiffs' request, the Cargill Defendants agreed last September to reduce the designation to "confidential." Upon further reflection, the Cargill Defendants agree to omit all designations other than "confidential" as to the stand-alone Grower Environmental Policy at page CARTP000007.

(Id. at CARTP000018.) The guide in no way indicates a belief that following such local regulations in a place like the IRW would nonetheless always result in unlawful nuisance.

Second, Plaintiffs’ sources do not suggest that turkey litter land-applied by any Cargill or CTP contract grower has in fact run off or leached into the waters of the IRW, and Plaintiffs’ own investigators found **no evidence of runoff or leaching at Cargill grower sites**. (See Dkt. No. 2079-7 & 2079-14 (*passim*); accord Davis R. at Dkt. 2092-4. See also Dkt. Nos. 2085-3 at 83:12–84:5; 2079-12 at 182:8-19; 2085-4 at 21:22–22:25; 2085-5 at 55:23–56:21 (Plaintiffs have identified no evidence of runoff from any Cargill-related field damaging IRW waters).)

Third, Plaintiffs are well aware that this handbook does not amount to an admission by the Cargill Defendants. No one from Cargill authored the statements on page CARTP000009 now utilized by Plaintiffs; Tim Maupin compiled the handbook from several information sources while at a previous employer in order to disseminate educational information to contract growers regarding such issues as nutrient management, disease control, and insect control. (Dkt. No. 2079-5: Maupin 5/15/08 Dep. at 168:5-25.) After Mr. Maupin began work for Cargill, he disseminated a version of this compiled guide to Cargill’s contract growers. (Id. at 181:25–183:11.) Mr. Maupin testified that did not endorse any specific statement in the handbook and made no attempts to edit any statements. (Id. at 169:1-20.) The Cargill Defendants’ statements in the handbook are limited to a one-page “Grower Environmental Policy” preceding the Table of Contents and set out in a different typestyle, which even Plaintiffs’ counsel has acknowledged is separate and distinct from the rest of the book. (Id. at 175:2–178:16, 179:21-24, 181:25–182:8, 291:22 – 292:17; see also Dkt. No. 2103-4 Sealed Ex. 110 at CARTP000005.)

In sum, the Court should disregard Plaintiffs’ erroneous statement that “Cargill...agree[s] that poultry waste always runs-off from the land to which it is applied,” and the implication that

Cargill agrees “land application of poultry waste in the IRW is a nuisance at all times and under any circumstances, regardless of location or surroundings.” (See Dkt. No. 2119 at 15-16.)

Respectfully submitted,

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